RDs File No. 407

1939

P 30

Collection No.

A

Mysore Residency

QB 22/7/47 Mas 23/7

(K)

Pros. Serial Nos. 1–6

Subject.

Petition from M. P. Iddaiah for remission of sentence. Rejected by HR.

Previous References.	Later References.

S. 97.—(Green).

MFP—1663 S&P—(M-2971)—24-6-38—100,000.

1

This case, in brief, relates to the accused persons having fraudently with intent to conceal the state of their affairs and to defeat the objects of the Provincial Insolvency Act destroyed or otherwise wilfully prevented or purposely with-held the production of the account books relating to their affairs. Under section 22 of the Provincial Insolvency Act as soon as they were adjudged insolvents, they were bound to produce their account books into Court, and the reason for their non-production was to allow certain debtors of their firm to have their debts time-barred, and to defraud P.W.8 and others of what was legally due to them. Whereas the obligation fell on the accused in 1928 to produce the account books, they were really produced in 1938 - 10 years later, and after the institution of proceedings to prosecute them for their non-production. The story of the accused relating to the non-production, and the findings of the trial Court and the Court of the Resident may be found in the judgments. The findings are that the account books were removed and concealed by the accused somewhere. If the insolvency case itself had not been of such magnitude, criminal Courts would not have taken such a serious view of the case. From the petition it may be seen that the liabilities of the firm amounted to Rs.132,560/-. When so many creditors stand to lose, the insolvents must be expected to be diligent and honest in order and deserve the protection of the Insolvency Court.

Act of 1920

(A)

(P)

page 27 of the printed record - (M)

2

The substance of the representations in the present petition again is that the account books were not with them. Please see page 6 of the petition. The Government is not sitting as an Appellate Tribunal against the judgment of the Court of the Hon'ble the Resident. The punushment is under

encl. to P.U.C

under a special Act, and the question is whether any special case has been made out why law shpuld be stopped from ru its course.

3 Regarding para 10 of the petition, it does not appear necessary to suspend execution of the sentence, because orders on the main petition can be passed early. Draft is for approval in case it is decided to reject the petition.

Submitted for orders.

4

AsRao
6.7.39

5. Draft for approval (from para 1)

Secretary.

7/7/39.

Resident

6 approved

S.N.(2): Issue

Issued

Dy.No. 9300 S.N. 3

7- Presumably an appeal for premature release.

J.G. 6/9

8 I would like a copy of Criminal Code of Procedure and I.P.C. with commentaries for my Office library.

Action separately being taken

J.G.

9 The present petition contains nothing new which had not beem mentioned in the original petition for remission. Paras 1 and 2 of notes submitted the position. It is said that the prisoner has completed 1½ months out of the 4 months of simple imprisonment. Draft is for approval if it is decided to reject the petition. Submitted for orders

S N. 1

para 1 of Pet.

AsRao
7.9.39

7/9/39.

S.No. (4). Issue.

Resident.

Secretary.

Dy.No. 10,793 S.N. 5

×S.N.2 / Cor.p.11 + S.N. 4 / Cor.p.17

Please see the orders declining to remit the unexpired portion of the sentence.

The petitioner, it appears, will have to serve the full term of 4 months as he is not entitled to any remission, according to Rule 291(2) of the Mysore Jail Manual. It is said that he is due for release on 11-11-1939. He prays for a week's remission. Perhaps no fresh circumstances have been made out calling for a revision of the orders passed on the previous occasions. Submitted for orders.

put up

ASRao
25.x.39

28/10/39

Secretary.

Draft is submitted for approval.

ASRao
30.x.39

31/10/39

Secretary.

S.No.(6): Issue

Issued
31.x.39

Record

Rte

CORRESPONDENCE.

H. S. RAJA AIYANGAR, M.A., B.L.,
ADVOCATE,
(MADRAS & BANGALORE.)

Vani Vilas Circle, Basavanagudi P.

Bangalore, 5th J U L Y 1939

To

Secretary to the Hon'ble the Resident
in Mysore at Bangalore,
B a n g a l o r e.

Sir,

As Counsel for and on behalf of Udairaj for whom I appeared before the Court of Trial as well as of Appeal, I beg to submit herewith his application to the Local Government under Section 401 of the Code of Criminal Procedure and also to solicit the issue of an emergent interim order suspending the execution of his sentence in terms of the subsidiary prayer in that behalf in paragraph 10 (b) and pending disposal of the main prayer in paragraph 10 (a) of the said application.

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
5 JUL. 1939
Diary No. 6827
File No.

I beg to remain,
Sir,
Your most obedient servant,

Counsel for Petitioner.

BEFORE THE HON'BLE THE BRITISH RESIDENT IN MYSORE

AT BANGALORE.

Criminal Petition No. of 1939.

M.P.Udairaj,
Son of Ponnalal,
for the time being in Bangalore. ... PETITIONER.

---:ooo(0)ooo:---

Under Section 401 of the Code of Criminal Procedure, the petition of Udairaj beforementioned most humbly showeth as follows:-

(1) The address of the petitioner, who has no local abode, is that of his Counsel, Mr.H.S.Raja Aiyangar, M.A., B.L., Advocate, Bangalore, for the purposes of these proceedings.

(2) The petitioner is the son of the late Ponnalal, who was carrying on the business of Military Bankers under the name and style of M.Ponnalal & Sons at R.H.A. Bazaar in the Civil & Military Station of Bangalore. There was a branch of the said business at Trimulgerri in Deccan as well.

(3) During the life time of Ponnalal, the business at Bangalore was under his management and that at Trimulgerri was in charge of an authorised agent in

3)

association with the petitioner. He has a brother by name Sohanlal who remained with and assisted Ponnalal.

(4) Ponnalal died in August 1927 when the petitioner and his brother were yet young and ill equipped with the requisite experience or knowledge of the affairs of the business. The death occured at Bangalore in the absence of the petitioner and brought him hither from Trimulgerri to face a chaotic and discouraging state of things. He endeavoured to bring some order into the business but was thwarted by the uncompromising attitude of one of the creditors, namely, A.Kothandapani Mudaliar, who embarked on a series of actions in the Civil Courts beginning with November 1927 and interspersed with frequent applications for arrest and attachment before and after judgment; so much so, the business collapsed and became defunct and the petitioner and his brother were rendered destitute and homeless.

(5) In consequence of these actions, the petitioner and his brother had to invoke the protection of the Insolvency Law and were adjudged insolvents in February 1932. Out of these proceedings arose a prosecution against them sanctioned at the instance of the creditor beforementioned by the Judge in Insolvency. The Munsiff Magistrate who dealt with this prosecution in Criminal Case No.427 of 1937 convicted them, sentencing each to undergo simple

M.P. Udaiyaj

imprisonment for six months. An appeal from such conviction and sentence was lodged in Criminal Appeal No.45 of 1938 before the Sessions Judge who in view of the sanction accorded by him as aforesaid as the Judge in Insolvency had the same removed from his file. The appeal was therefore taken over for disposal in Criminal Appeal No.3 of 1939 by the Additional Judge of the Court of the Hon'ble the Resident in Mysore at Bangalore who confirmed the conviction but reduced the sentence on the petitioner to simple imprisonment for four months and directed the release of his brother under Section 562 of the Criminal Procedure Code.

(6) The said prosecution which at first involved an enquiry into more offences than one under Section 69 of the Provincial Insolvency Act, resulted in the framing of a charge that confined the trial to the offence concerned with the absence of the account books of the business alleged to have been brought about within the purpose and intent of Clause b (i) of the said section. Some of the books were produced in Original Suit No.45 of 1927 being one of the actions referred to above; and the rest were in the premises of the business being Nos.18 & 19, R. H. A. Bazaar, Bangalore. The memory of the petitioner served only to say that the books so produced were

still in court; as for the remaining books, they went into the custody of the Official Receiver when he through his clerk took delivery of the said premises with their contents in or about July 1932 upon a direction from the Insolvency Court issued at the instance of the petitioner. This event is borne out by the record of the proceedings of the Official Receiver maintained in his office. It transpired subsequently that the books believed in good faith to be still in Court were not there but amongst the books which passed into the custody of the Official Receiver as aforesaid. In the result, things had so worked out that all the books which were produced before the Munsiff Magistrate during the progress of the prosecution beforementioned had passed to the control of the Official Receiver and were ready at hand for him to scrutinise.

(7) The creditor beforementioned employed the process of the court to such effect that the petitioner and his brother were literally scared away from Bangalore which they quitted for good by the end of 1928. They left the account books and other movables behind in the said premises which remained locked ever since until they passed to the Official Receiver. The outstanding debts and decrees in favour of the business had through efflux of time turned unrealisable by 1930, that is, long before the adjudication of the petitioner and his brother as insolvents in 1932.

M. P. Udairaj

In this predicament, no intent or purpose enumerated in Clause b (i) of Section 69 of the Provincial Insolvency Act stood to be served or gained by the withholding of the account books; and in fact, the petitioner never intended to keep them back and did not keep them back at all. The materials on record in the said prosecution also tend strongly to the same conclusion.

(8) The evidence for the prosecution affords no proof of the offence charged against the petitioner and his brother. The conviction to all intents and purposes is based entirely upon a consideration of the evidence for the defence including that of a court witness who was interposed after a majority of the witnesses for the defence had been examined. D.W.3, the clerk in the office of the Official Receiver, who was deputed to take charge of the said premises with their contents, deposes that there were about 200 account books some of which had been partly eaten up by white ants. He further says that when delivering the said premises about an year later to D.W.8 pursuant to an order of the Court, the books also were handed over to him for safe custody. D.W.8, a "sowcar" of 30 years standing, confirms D.W.3 and says that he kept the books in a room in the said premises from the time he got them up to the date of their removal for production through his son, D.W.4, before the

Munsiff Magistrate. D.W.7, a neighbour, states that he had occasion to see the books in the said premises when D.W.8 was tidying them up when he got delivery of the same from the Official Receiver. D.W.6 of the well known firm of Army Contractors styled Chajjumul & Sons who was a tenant of the said premises, says that a room therein contained the account books and was kept locked by D.W.8. D.W.5, a former employee of M.Ponnalal & Sons, states that the petitioner and his brother quitted Bangalore by the end of 1928, leaving the account books behind in the said premises. The combined effect of the evidence of D.W's 1 & 3 to 8 is that the petitioner and his brother were not residing in Bangalore from 1928 onwards and that the account books remained deposited in the said premises throughout. This mass of evidence coupled with the record of the office of the Official Receiver and other documents has been opined to be suspect through an unfortunate but erroneous assumption that D.W.3 is corrupt and D.W's 5 to 8 are of the same caste; and reliance has been placed, first upon D.W.2, an auctioneer, whose main interest lies in the disposal of saleable articles and next upon C.W.1 whose recollections of the said premises are so vague as to render him incapable of vouching for the accuracy of a plan thereof, in order to arrive at the conclusion that the account books were neither in the said premises nor

M. P. Udairaj

with the Official Receiver or D.W.8 and came actually from the secret custody of the petitioner himself. It is most humbly submitted that the conclusion is far fetched and loses sight not only of the principle as to the benefit of doubt which ought to have been applied to his case in the last resort but also of the rule that where the prosecution fails to prove its case no conviction can ensue on the ground of the falsity of the case for the defence.

(9) The learned Additional Judge, in vacating the finding of guilt come to by the Munsiff Magistrate under Clause b (i) of Section 69 of the Provincial Insolvency Act, has all the same convicted the petitioner by resorting to Clause (a) thereof which concerns an offence not arising for consideration in the light of what is contained in paragraph 6 herein. It is worthy of note that the disposal of the appeal by the learned Additional Judge after transferring the same from the file of the Sessions Judge has deprived the petitioner of a valuable opportunity of agitating his case further in revision under Sections 435 and 439 of the Code of Criminal Procedure. The multifarious proceedings civil and criminal in which he has been steeped during the space of about 12 years just past coupled with the postponement of his discharge in insolvency rendered conditional in addition and the wreck of his home reputation and property

constitute in themselves a punishment out of all proportion to the errors if any committed by him in ignorance or through neglect. It has been a long and arduous struggle for him ever since his father's death in 1927; and the sentence now imposed upon him is bound to blast for ever his future. He comes of a respectable family without any taint of criminal propensity.

(10) a) In the foregoing circumstances, the petitioner most humbly prays that the record in Criminal Case No.427 of 1937 on the file of the Munsiff Magistrate and the connected Criminal Appeal No.3 of 1939 on the file of the Honourable the Resident's Court be perused; that the punishment to which he has been sentenced be wholly remitted; and that such further direction be made as may seem just and necessary.

b) The petitioner was upon his appeal enlarged on bail which is still subsisting. As a result of the conviction by the learned Additional Judge, the petitioner has in due course to surrender himself and serve out the sentence of simple imprisonment for four months imposed upon him. He further most humbly prays that the execution of his sentence be temporarily suspended and that pending disposal of this application, he be allowed to remain at large on the same bail or on such fresh or additional bail as may be prescribed and that

M. P. Udaiyaj

as the execution of his sentence is imminent, an emergent interim order of suspension be issued as aforesaid.

M.P. Udairaj

Bangalore,
Dated 5--7--1939.

PETITIONER.

R.Dis.No.F.407-39. Judl. Dated 10th July '39

To

H.S.Raja Aiyangar, Esq.,
M.A.,B.L., Advocate,
Vani Vilas Circle,
Basavanagudi, Bangalore.

Reference his letter dated the 5th July 1939 enclosing petition from M.P.Udairaj under section 401 of the Code of Criminal Procedure.

2. ~~The petitioner may kind.,~~ be ~~informed that~~ the Hon'ble the Resident sees no reason to remit the punishment to which the petitioner has been sentenced.

Secretary to the Resident.

12

F 4913 P

The Central Jail,
Bangalore,
Dated: -1939

S. N. 3

From

M.P.Udayaraj, prisoner No. 4358.

Through the Jail Superintendent,
The Bangalore Central Jail,
Bangalore.

To

The Honourable

Lieut. Colonel J.H.Gordon Esq. C.I.E., O.B.E.,M.C.,
The Hon'ble the British Resident in Mysore,

C & M Station, Bangalore.

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
6 SEP. 1939
Diary No. 9300
File No. 18407/39

~~Letter~~ or Petition No. 543/P. dt. 4/9/39.

Ref.C.C.No.427/1936 Cr.A.No.45/1938 and Cr.A.No. 3/1939

Respected Sir,

I beg to bring the following few lines to your honour's kind consideration and favourable orders:

I the appellant in the above cases was convicted for four months simple imprisonment on 27-6-39 in Cr.Appeal No.3 of 1939.

1. I am staying for the past one and half months in the central jail undergoing the above sentence, but I have not committed such a blunder to get this punishment which is more serious to me.

2. So I humbly pray your honour to just take trouble to go through this letter or petition fully and judge m yourself.

3.The Cr.case No.427/36 was lodged against me by District and Sessions Judge without giving me notice under section 69-C of C.P.C The District and Sessions Judge has no reason to grame charges against me without notice.

This is improper as for my idea. The District and Sessions Judge has not asked for the account books from me or my vakil and before his framing charges against me. So there is no reason for his framing charges against me. The District and Sessions Judge has no reason to frame charges against me as Ihave already handed over the account books completely and fully to the Official receiver in 1931. Even during the day of trial these things have been proved by many witnesses. Even after that if the Honorable court has any doubt it could just make enquiries among the bidders that were present on the day of auction the list of whom is in the court.

4. If I had been ordered by the District and Sessions Judge to produce the account books, I would have either brought the account books from the official receiver and produced them in the court or I would have made annangements for the production of those accountsbooks through the official receiver; without either asking me to produce the account books in the court framing charges against me is unjust and improper.

5. The Cr. No. 427/1936 which was lodged against me by District and Sessions Judge was under section 69-C Cr.P.C. and the District Magistrate who tried the case has found the case under 69-B. of code of Criminal procedure. When the case was not proved under the section 69-C is it not necessary for the court to dismiss the case.

6. But without dismissing the case the District Magis trate in his judgment without taking into account the wit nesses D.W.1 to D.W.8 who had disproved the case but considering the only witness of the public prosecutor who was C.W.1 had given punishment of six months to myself

and my brother under section 69-B of the Code of Criminal procedure.

7. Then I made appeal in the court of the District and Sessions which was Cr.A.No.45 of 1938 and the same appeal was transferred by the District and Sessions Judge to your honour's court to be tried by the additional Judge whodid not find 69-B of Cr.P.C. binding me and he released my brother and punished me for four months, S.I. under section 69-A of the Cr.P.Code.

8. So this is to submit that the above mentioned account books have reached the above court already in the Cr.C. 427 of 1938. These account books were in the court and it has been proved that they belong to M.Pananlal & sons and it has also been proved that the accounts have completely reached the court.

9. If I had any idea of with-holding the account books and get myself benefited by them I would not have handed over the ~~aee~~ 17 account books to the court in O.S. No. 45 of 1927.

10. I was not benefited to the least extent by these account books and such being the case there is no necessity for me to hide them.

11. By these above mentioned points it follows that I had definitely no idea to conceal the account books and hence I am not a culprit and punishment given to me is not just.

12.For the past 12 years this case is going against me and can the Hon'ble court prove it that I am of misconduct and wrong behaviour. During these 12 years I was leading a most strenuous life in father-in-law's house.

13. Even after so many hard years struggle in life if the Hon'ble court decides that I should not be released when ~~I~~ am I to remodel my life if I am punished like this. Now atleast I request the Hon'ble court to please have mercy on me and my worst condition in my life and find out a way for my release without remark.

14. As I am not guilty under any reasons I beg to release me without any remark. As my father-in-law died there is no male help in my house to my wife who is an advanced pregnant woman and to ~~m~~ young children who are just like orphans now; Now I pray your honour to be so gracious enough to consider my circumstances in life and to release me at once. Now your honour's releasing me will be not only releasing a helpless family considering of an advanced pregnant woman and young children.

15. As regards my good conduct and behaviour many Lieut. Colonels and big Gazetted Officers that were holding officers at the same Bangalore have testified and given testimonials. But these gentlemen are not in Bangalore now. If they were at Bangalore they could surely help me now. Now by their absence I am an orphan now.

Considering the above circumstances, I humbly pray your honour to just release me at any cost.

Thanking you,

I beg to remain,
Your honour,
Your honour's most obedient
servant,

N.P. Udaiyar

(Petitioner)

I have been awarded several testimonials of good character from military officers & Gazetted officers the names of some of them I give below. for your kind consideration and if your Honour want me to produce the testimonials, I am prepared to do the same. Names —

Lieut: General. Poor. Seventh Queen Hussars
Lieut General Norton- Do.
Lieut, colonel. Kirkland. R. F. A.
Lieut. colonel. Butler, Do.
Lieut - colonel, Tokinith. Remount Depot
major. sacks. R. H. A.
major. Gilliams. R. F. A.
Capt major. Evanslone - D. S. O.
Captain. Jarrell. R. F. A.
Wood. R. F. A.
Turner. R. F. A.

These above officers have awarded me certificate of good character.

Issued 12/9/39

Issue 9/9

P.U.C S.N 3

(17

R.Dis.No.F. 407-39 Judl. Dated 12th Sept.39

To

M.P.Udayaraj,
Prisoner No. 4358, Central Jail, Bangalore.

Through

The Superintendent, Central Jail, Bangalore.

Reference his petition No. 543/P. dated the 4th Septamber 1939.

2. The Hon'ble the Resident sees no reason to remit the unexpired portion of the sentence awarded to him.

(Sd) H. Trevelyan,

Secretary to the Resident.

ASR 7.9.39

S. No. 5

18

Hsla 23.x.39 To

J.C

The Honourable The British Resident in Mysore
C. and M. Station, Bangalore.

Pdi 207/39 From

M. P. Udayaraj
Bangalore Central jail
Bangalore.

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
23 Jul 1939
Diary No. 10,793
File No.

May it please your Honour,

Reference:. Cr. Appeal No. 3/1939 in your Honour's Court.

I take the following few lines to your Honour's kind Consideration and favourable orders:-

I had been Convicted for four months simple imprisonment in the Criminal appeal No. 3/1939 in your Honour's Court.

I am undergoing punishment from 12-7-1939 in the Bangalore Central Jail, i,e, for the past three months. The Sentence will expire on 11-11-1939 in the usual Course.

During these three months I have been of good character which you can ascertain from the Jail Superintendent of Bangalore. The prisoners are usually granted remissions in their Sentence for good character.

New Deepavali festival and New year Day falls on 10-11-1939. For Jains like me this is the most important and holy festival of the year. My presence in my house at least a week before 10-11-1939 is essential to make preparations for the due observance of this all important festival.

Hence I humbly pray your Honour to graciously grant me remission of 7 days from my sentence so that I and my helpless family might celebrate the festival with devotion to God, and gratitude to you.

Bangalore Central Jail
Bangalore. 20. x. 1939.

I, beg to remain
Honoured Sir
your most obedient Servant
M. P. Udaiyaraj

Office of the Superintendent, Central Jail,
BANGALORE

No. 601/P. Date 20-10- 1939

Forwarded with compliments to the Registrar, the Honourable the Resident's High Court, Civil and Military Station, Bangalore.

Superintendent,
Bangalore Central Jail.

20.10.39.

Issue 31/x

Issued 31/10/39

plase su S.N 4 Cor p.17

P6

R.Dis.No.F. 407-39 Judl. Dated 31st October 39

To

M.P.Udayaraj,
Prisoner No.4358, Central Jail, Bangalore.

Through

The Superintendent, Central Jail, Bangalore.

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o Pu.c S.N 5

Reference his petition dated the 20th October 1939.

The Hon'ble the Resident sees no reason to grant the remission prayed for.

sd/- H. Trevelyan.

Secretary to the Resident.

ASRao 30.x.39